



GOV. MSG. NO. **1153**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 18, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 18, 2011, the following bill was signed into law:

SB1291 SD2 HD2

RELATING TO CHILD PROTECTIVE ACT COURT
PROCEEDINGS
ACT 051 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 1291
S.D. 2
H.D. 2

A BILL FOR AN ACT

RELATING TO CHILD PROTECTIVE ACT COURT PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. During the 2010 regular session, the
2 legislature passed S.B. No. 2716, C.D. 1, which was enacted as
3 Act 135, Session Laws of Hawaii 2010, and codified as the Child
4 Protective Act, chapter 587A, Hawaii Revised Statutes. Act 135
5 was a comprehensive update of the former Child Protective Act,
6 chapter 587, Hawaii Revised Statutes, which was repealed by Act
7 135. The provisions of Act 135 ensure the State's compliance
8 with federal Title IV-E requirements so that Hawaii remains
9 eligible for approximately \$40,000,000 in annual federal
10 funding. Subsequent to the enactment of chapter 587A, it has
11 become necessary to clarify wording in the statute to further
12 ensure consistency in practice and compliance with federal
13 requirements.

14 SECTION 2. Section 587A-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 " ~~[+]§587A-5[+]~~ **Jurisdiction.** Pursuant to section
17 571-11(9), the court shall have exclusive original jurisdiction
18 ~~[in a child protective proceeding concerning]~~:

SB1291 HD2 HMS 2011-3300



1 (1) In a child protective proceeding concerning any child
2 who is or was found within the State at the time
3 specified facts and circumstances occurred, are
4 discovered, or are reported to the department. These
5 facts and circumstances constitute the basis for the
6 court's finding that the child's physical or
7 psychological health or welfare is subject to imminent
8 harm, has been harmed, or is subject to threatened
9 harm by the acts or omissions of the child's
10 family[-]; and

11 (2) In any prior child protective proceeding under chapter
12 587, the former Child Protective Act."

13 SECTION 3. Section 587A-27, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The service plan shall provide:

16 (1) The specific steps necessary to facilitate the return
17 of the child to a safe family home, if the proposed
18 placement of the child is in foster care under foster
19 custody. These specific steps shall include treatment
20 and services that will be provided, actions completed,
21 specific measurable and behavioral changes that must
22 be achieved, and responsibilities assumed;



- 1 (2) Whether an ohana conference will be conducted for
2 [faet] family finding and family group decision
3 making;
- 4 (3) The respective responsibilities of the child, the
5 parents, legal guardian or custodian, the department,
6 other family members, and treatment providers, and a
7 description and expected outcomes of the services
8 required to achieve the permanency goal;
- 9 (4) The required frequency and types of contact between
10 the assigned social worker, the child, and the family;
- 11 (5) The time frames during which services will be
12 provided, actions must be completed, and
13 responsibilities must be discharged;
- 14 (6) Notice to the parents that their failure to
15 substantially achieve the objectives described in the
16 service plan within the time frames established may
17 result in termination of their parental rights;
- 18 (7) Notice to the parents that if the child has been in
19 foster care under the responsibility of the department
20 for an aggregate of fifteen out of the most recent
21 twenty-two months from the child's date of entry into
22 foster care, the department is required to file a



1 motion to set a termination of parental rights
2 hearing, and the parents' failure to provide a safe
3 family home within two years from the date when the
4 child was first placed under foster custody by the
5 court, may result in the parents' parental rights
6 being terminated; and

7 (8) Any other terms and conditions that the court or the
8 authorized agency deem necessary to the success of the
9 service plan."

10 SECTION 4. Section 587A-28, Hawaii Revised Statutes, is
11 amended by amending subsection (e) to read as follows:

12 "(e) If the court finds that the child's physical or
13 psychological health or welfare has been harmed or is subject to
14 threatened harm by the acts or omissions of the child's family,
15 the court:

16 (1) Shall enter a finding that the court has jurisdiction
17 pursuant to section 587A-5;

18 (2) Shall enter a finding regarding whether, before the
19 child was placed in foster care, the department made
20 reasonable efforts to prevent or eliminate the need to
21 remove the child from the child's family home;

22 (3) Shall enter orders:



- 1 (A) That the child be placed in foster custody if the
- 2 court finds that the child's remaining in the
- 3 family home is contrary to the welfare of the
- 4 child and the child's parents are not willing and
- 5 able to provide a safe family home for the child,
- 6 even with the assistance of a service plan; or
- 7 (B) That the child be placed in family supervision if
- 8 the court finds that the child's parents are
- 9 willing and able to provide the child with a safe
- 10 family home with the assistance of a service
- 11 plan;
- 12 (4) Shall determine whether aggravated circumstances are
- 13 present.
- 14 (A) If aggravated circumstances are present, the
- 15 court shall:
- 16 (i) Conduct a permanency hearing within thirty
- 17 days, and the department shall not be
- 18 required to provide the child's parents with
- 19 an interim service plan or interim
- 20 visitation; and
- 21 (ii) Order the department to file, within sixty
- 22 days after the court's finding that



1 aggravated circumstances are present, a
2 motion to [~~set the case for a termination of~~
3 ~~parental rights hearing.~~] terminate parental
4 rights unless the department has documented
5 in the safe family home factors or other
6 written report submitted to the court a
7 compelling reason why it is not in the best
8 interest of the child to file a motion.

9 (B) If aggravated circumstances are not present[7] or
10 there is a compelling reason why it is not in the
11 best interest of the child to file a motion to
12 terminate parental rights, the court shall order
13 that the department make reasonable efforts to
14 reunify the child with the child's parents and
15 order an appropriate service plan;

16 (5) Shall order reasonable supervised or unsupervised
17 visits for the child and the child's family, including
18 with the child's siblings, unless such visits are
19 determined to be unsafe or detrimental to, and not in
20 the best interests of, the child;

21 (6) Shall order each of the child's birth parents to
22 complete the medical information forms and release the



1 medical information required under section 578-14.5,
2 to the department. If the child's birth parents
3 refuse to complete the forms or to release the
4 information, the court may order the release of the
5 information over the parents' objections;

6 (7) Shall determine whether each party understands that
7 unless the family is willing and able to provide the
8 child with a safe family home, even with the
9 assistance of a service plan, within the reasonable
10 period of time specified in the service plan, their
11 respective parental and custodial duties and rights
12 shall be subject to termination;

13 (8) Shall determine the child's date of entry into foster
14 care as defined in this chapter;

15 (9) Shall set a periodic review hearing to be conducted no
16 later than six months after the date of entry into
17 foster care and a permanency hearing to be held no
18 later than twelve months after the date of entry into
19 foster care;

20 (10) Shall set a status conference, as the court deems
21 appropriate, to be conducted no later than ninety days
22 after the return hearing; and



1 (11) May order that:

2 (A) Any party participate in, complete, be liable
3 for, and make every good faith effort to arrange
4 payment for such services or treatment as are
5 authorized by law and that are determined to be
6 in the child's best interests;

7 (B) The child be examined by a physician, surgeon,
8 psychiatrist, or psychologist; and

9 (C) The child receive treatment, including
10 hospitalization or placement in other suitable
11 facilities, as is determined to be in the child's
12 best interests."

13 SECTION 5. Section 587A-30, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~§~~587A-30~~]~~ **Periodic review hearing.** (a) The court
16 shall set a periodic review hearing to be conducted no later
17 than six months after a child's date of entry into foster care.
18 Thereafter, the court shall conduct periodic review hearings at
19 intervals of no longer than six months until the court's
20 jurisdiction is terminated~~[-]~~ unless the child is in the
21 permanent custody of the department or an authorized agency. If
22 the child is in the permanent custody of the department or an



1 authorized agency, the court shall conduct a permanency hearing
2 at intervals of no longer than six months until the court's
3 jurisdiction is terminated. The court may set a case for a
4 periodic review hearing upon the motion of a party at any time,
5 if the court deems the hearing to be in the best interests of
6 the child.

7 (b) At each periodic review hearing, the court shall
8 review the status of the case to determine whether the child is
9 receiving appropriate services and care, whether the case plan
10 is being properly implemented, and whether the department's or
11 authorized agency's activities are directed toward a permanent
12 placement for the child. At the hearing, the court shall:

13 (1) Determine whether the child is safe[+] and enter
14 orders:

15 (A) That the child be placed in foster custody if the
16 court finds that the child's remaining in the
17 family home is contrary to the welfare of the
18 child and the child's parents are not willing and
19 able to provide a safe family home for the child,
20 even with the assistance of a service plan;

21 (B) That the child be placed in family supervision if
22 the court finds that the child's parents are



1 willing and able to provide the child with a safe
2 family home with the assistance of a service
3 plan; or

4 (C) To terminate jurisdiction if the court finds that
5 the child's parents are willing and able to
6 provide the child with a safe family home without
7 the assistance of a service plan;

8 (2) Determine the continued need for and appropriateness
9 of the out-of-home placement;

10 (3) Determine the extent to which each party has complied
11 with the case plan and the family's progress in making
12 their home safe for the child;

13 (4) Determine the family's progress in resolving the
14 problems that caused the child harm or to be
15 threatened with harm and, if applicable, the necessity
16 for continued out-of-home placement of the child;

17 (5) Project a likely date for:

18 (A) The child's return to a safe family home; or

19 (B) The child's permanent placement out of the family
20 home in the following order of preference:

21 (i) Adoption;

22 (ii) Legal guardianship; or



- 1 (iii) Other permanent out-of-home placement;
- 2 (6) Evaluate visitation arrangements; and
- 3 (7) Issue such further or other appropriate orders as it
- 4 deems to be in the best interests of the child.
- 5 (c) If the child has been in foster care under the
- 6 responsibility of the department for an aggregate of fifteen out
- 7 of the most recent twenty-two months from the date of entry into
- 8 foster care, the department shall file a motion to [~~set the~~
- 9 ~~matter for a termination of parental rights hearing,~~] terminate
- 10 parental rights, unless:
- 11 (1) The department has documented in the safe family home
- 12 factors or other written report submitted to the court
- 13 a compelling reason why it is not in the best interest
- 14 of the child to file a motion; or
- 15 (2). The department has not provided to the family of the
- 16 child, consistent with the time period required in the
- 17 service plan, such services as the department deems
- 18 necessary for the safe return of the child to the
- 19 family home.
- 20 (d) Nothing in this section shall prevent the department
- 21 from filing a motion to [~~set a termination of parental rights~~



1 ~~hearing]~~ terminate parental rights if the department determines
2 that the criteria for terminating parental rights are present."

3 SECTION 6. Section 587A-31, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§587A-31[+] **Permanency hearing.** (a) A permanency
6 hearing shall be conducted within twelve months of the child's
7 date of entry into foster care or within thirty days of a
8 judicial determination that the child is an abandoned infant or
9 that aggravated circumstances are present. A permanency hearing
10 shall be conducted at least every twelve months thereafter for
11 as long as the child remains in foster care under the placement
12 responsibility of the department[-] or an authorized agency, or
13 every six months thereafter if the child remains in the
14 permanent custody of the department or an authorized agency.

15 (b) The court shall review the status of the case to
16 determine whether the child is receiving appropriate services
17 and care, that case plans are being properly implemented, and
18 that activities are directed toward a permanent placement for
19 the child.

20 (c) At each permanency hearing, the court shall make
21 written findings pertaining to:



- 1 (1) The extent to which each party has complied with the
2 service plan and progressed in making the home safe;
- 3 (2) Whether the current placement of the child continues
4 to be appropriate and in the best interests of the
5 child or if another in-state or out-of-state placement
6 should be considered;
- 7 (3) The court's projected timetable for reunification or,
8 if the current placement is not expected to be
9 permanent, placement in an adoptive home, with a legal
10 guardian, or under the permanent custody of the
11 department[+] or an authorized agency;
- 12 (4) Whether the department has made reasonable efforts, in
13 accordance with the safety and well-being of the
14 child, to:
- 15 (A) Place siblings who have been removed from the
16 family home with the same resource family,
17 adoptive placement, or legal guardians; and
- 18 (B) Provide for frequent visitation or other on-going
19 interactions with siblings who are not living in
20 the same household;
- 21 (5) The appropriate permanency goal for the child,
22 including whether a change in goal is necessary;



- 1 (6) Whether the department has made reasonable efforts to
2 finalize the permanency goal in effect for the child
3 and a summary of those efforts;
- 4 (7) The date by which the permanency goal for the child is
5 to be achieved;
- 6 (8) In the case of a child who has attained sixteen years
7 of age, the services needed to assist the child with
8 the transition from foster care to independent living;
9 and
- 10 (9) Consultations with the child in an age-appropriate
11 manner about the proposed plan for permanency or
12 transition from foster care to independent living.
- 13 (d) At each permanency hearing, the court shall order:
- 14 (1) The child's reunification with a parent or parents;
- 15 (2) The child's continued placement in foster care, where:
- 16 (A) Reunification is expected to occur within a time
17 frame that is consistent with the developmental
18 needs of the child; and
- 19 (B) The safety and health of the child can be
20 adequately safeguarded; or
- 21 (3) A permanent plan with a goal of:



- 1 (A) Placing the child for adoption and when the
2 department will file a motion to set the matter
3 for the termination [+]of[+] parental rights;
- 4 (B) Placing the child for legal guardianship if the
5 department documents and presents to the court a
6 compelling reason why termination of parental
7 rights and adoption are not in the best interests
8 of the child; or
- 9 (C) Awarding permanent custody to the department or
10 an authorized agency, if the department documents
11 and presents to the court a compelling reason why
12 adoption and legal guardianship are not in the
13 best interests of the child.

14 (e) At each permanency hearing where a permanent plan is
15 ordered, the court shall make appropriate orders to ensure
16 timely implementation of the permanent plan and to ensure that
17 the plan is accomplished within a specified period of time.

18 (f) A permanency hearing may be held concurrently with a
19 periodic review hearing.

20 (g) If the child has been in foster care under the
21 responsibility of the department for a total of twelve
22 consecutive months or an aggregate of fifteen out of the most



1 recent twenty-two months from the date of entry into foster
2 care, the department shall file a motion to [~~set the matter for~~
3 ~~a termination of parental rights hearing~~] terminate parental
4 rights, unless:

5 (1) The department has documented in the safe family home
6 factors or other written report submitted to the
7 court[7] a compelling reason why it is not in the best
8 interest of the child to file a motion; or

9 (2) The department has not provided to the family of the
10 child, consistent with the time period required in the
11 service plan, such services as the department deems
12 necessary for the safe return of the child to the
13 family home.

14 (h) Nothing in this section shall prevent the department
15 from filing a motion to [~~set a termination of parental rights~~
16 ~~hearing~~] terminate parental rights if the department determines
17 that the criteria for terminating parental rights are present."

18 SECTION 7. Section 587A-33, Hawaii Revised Statutes, is
19 amended by amending subsection (i) to read as follows:

20 "(i) Absent compelling reasons, if the child has been in
21 foster care under the department's responsibility for an
22 aggregate of fifteen out of the most recent twenty-two months



1 from the date of entry into foster care, the department shall
2 file a motion to [~~set the matter for a termination of parental~~
3 ~~rights hearing.] terminate parental rights."~~

4 SECTION 8. Section 587A-34, Hawaii Revised Statutes, is
5 amended by amending subsection (e) to read as follows:

6 "(e) At a preliminary hearing on the motion, the court
7 shall continue the prior award of permanent custody and may
8 order a trial home placement and a temporary reinstatement of
9 parental rights upon finding that:

- 10 (1) There has been a material change in circumstances;
- 11 (2) A parent is willing to provide care for the child;
- 12 (3) A parent is able to provide a safe family home or the
- 13 home can be made safe with the assistance of services;
- 14 and
- 15 (4) A trial home placement is in the child's best
- 16 interests."

17 SECTION 9. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 10. This Act shall take effect on October 1, 2011.

APPROVED this 10 day of MAY, 2011



GOVERNOR OF THE STATE OF HAWAII